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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------|-------------|----------------------|---------------------|------------------|
| 10/814,629 | 04/01/2004 | Hartley Frank Young | 21854-00042-US | 7362 |
| 30678 | 7590 | 09/06/2005 | EXAMINER | |
| CONNOLLY BOVE LODGE & HUTZ LLP | | | LE, MARK T | |
| SUITE 800 | | | ART UNIT | |
| 1990 M STREET NW | | | PAPER NUMBER | |
| WASHINGTON, DC 20036-3425 | | | 3617 | |

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/814,629 | Applicant(s) YOUNG, HARTLEY FRANK | |
| | Examiner Mark T. Le | Art Unit 3617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 0727.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/21/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election without traverse of Group I, claims 1-7, in the reply filed on July 27, 2005, is acknowledged.
2. In the specification, page 4, line 21, "30" should read --31-- and "Figure 5" should read --Figure 6--.
3. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 2-3 of part (b), the expression "side portions on each side of said rail face extending away from the rail" is confusing because it is not clear as to whether the side portions or the rail face is extending away from the rail; and line 1 of part (d), it is not clear as to which structure is being referred to by the word "which".

The same problems are also found in claims 5-6.

Proper correction is required.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Bensenschek (US 5,730,357).

Bensenschek discloses a rail seat as recited in the instant claims, including tie 12, rail fastening support shoulders 20, rail pad 30, and insulator 24.

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6. Claims 1, 4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Young (US 5,203,502).

Young discloses a rail seat as recited in the instant claims, including tie 8, rail fastening support shoulders 10, rail pad 9, and insulator 12.

Regarding the rail pad with thickened shoulders, as recited in instant claims 4 and 7, note that the two pairs of projections on two sides 21 and 22 of Young are readable as thickened as broadly claimed.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young (US 5,203,502) in view of Karbus (US 4,971,247).

Young is applied above.

Regarding the instant claimed resilient tabs, consider nylon tabs 29 on the pad projections, as described in lines 55-60, column 3 of Karbus. As to the instant claimed resiliency, note that nylon, even hard nylon, inherently has at least a minimal degree of resiliency.

In view of Karbus, it would have been obvious to one skilled in the art to provide tabs on the pad projections of Young, in a manner similar to that taught by Karbus, so as enhance the retention of the pad relative to the support shoulders.

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9. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bensenschek (US 5,730,357) in view of Pilsesi (US 6,786,459).

Bensenschek is applied above.

Regarding the instant claimed projections extending from the sides of the support shoulders, as recited in instant claim 2, consider support shoulders shown in Figures 2b and 4 of Pilsesi; wherein, each support shoulder has ribs or projections extending from the sides thereof. In view of Pilsesi, it would have been obvious to one skilled in the art to substitute support shoulders, similar to that shown in Figures 2b and 4 of Pilsesi, for the support shoulders of Bensenschek so as to achieve expected functions/advantages thereof.

Regarding the instant claimed webs, consider web 32 of Bensenschek.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri (2:00-8:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
8/30/05